

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KERRY HAMILTON,

Defendant-Appellee.

UNPUBLISHED

July 24, 2003

No. 239060

Wayne Circuit Court

LC No. 01-003030

Before: Sawyer, PJ, and Meter and Schuette, JJ.

PER CURIAM.

The prosecutor appeals as of right from an order of dismissal entered after the prosecutor was unable to proceed to trial due to the suppression of defendant's confession. We affirm.

I. FACTS

Defendant was arrested without a warrant on Sunday, February 18, 2001 for relieving Roderick Williams of his money at gunpoint. Defendant and two co-defendants were charged with armed robbery and possession of a firearm during the commission of a felony, pursuant to MCL 650.529 and MCL 750.227b. Defendant's arrest came after he had been implicated by a codefendant. Defendant was approximately eighteen years old. He had a tenth-grade education and could read. It appears that he had no prior criminal convictions. After his arrest, defendant was held for approximately eighty hours and questioned four times before he was finally arraigned on February 22, 2001. During the first three interviews, defendant was not read his *Miranda*¹ rights nor was he instructed that he could request legal counsel. Defendant declined to answer questions in the first three interviews including one interview late at night. On February 20th, Detroit police officer Pamela Davis met with defendant. There, Davis properly advised defendant of his constitutional rights and showed him the codefendant's statement implicating defendant's involvement. The facts indicate that defendant understood his rights and voluntarily waived them. There is no evidence that he was mistreated or deprived of needed medical attention, or subjected to force or coercion. Defendant was allowed to speak with his mother after giving a statement. There is no indication that he requested the assistance of a lawyer at any time, even after being advised of his rights. Defendant's statements in the meeting led police

¹ *Miranda v. Arizona*, 384 US 436; 86 S Ct 1602 (1966)

to seek a warrant for his arrest. Defendant was arraigned the next day. There was no explanation offered for the delay in arraignment, such as the need to question additional witnesses or to investigate exculpatory statements.

II. STANDARD OF REVIEW

In reviewing a trial court's determination of the voluntariness issue, this Court must examine the entire record and make an independent determination. *People v Gould*, 225 Mich App 79, 88; 570 NW2d 140 (1997). The trial court's findings of fact will not be disturbed unless they are clearly erroneous. *People v LoCicero (After Remand)*, 453 Mich 496, 500; 556 NW2d 498 (1996). The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

III. ANALYSIS

The defendant argues that his statement was involuntary because he was not promptly arraigned and no excuse for the delay was given. The prosecution claims that defendant's confession should not be suppressed because it was voluntary and the delay was not excessive. The issue before the court is whether the trial court erred in suppressing the confession based on the delay. However, the delay alone was not long enough to render defendant's confession involuntary. *People v McKinney*, 251 Mich App 205, 211, n 3; 650 NW2d 353 (2002) (involving a delay of at least one hundred hours), and thus consideration of other factors are required.

Statements made during a custodial interrogation are inadmissible unless the defendant voluntarily, knowingly and intelligently waives his Fifth Amendment rights. *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997). The issue of voluntariness is to be determined solely by examining police conduct and cannot be resolved in defendant's favor absent some police coercion. *Id.*; *People v Garwood*, 205 Mich App 553, 555; 517 NW2d 843 (1994). The test of voluntariness is whether, considering the totality of the circumstances, the statement was the product of an essentially free and unconstrained choice or whether it was the result of an overborne will. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988).

Relevant factors in determining voluntariness include the defendant's age; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the lack of any advice to the defendant of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he made his statement; whether the defendant was injured, intoxicated or drugged, or in ill health when he made the statement; whether the defendant was deprived of food, sleep or medical attention; and whether he was physically abused or threatened with abuse. The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness. The ultimate test is whether the totality of the circumstances indicates that the statement was freely and voluntarily made. *Id.* at 334. The trial court is free to give greater or lesser weight to any of the relevant factors, including prearraignment delay, but may not give preemptive weight to that one factor. *People v Manning*, 243 Mich App 615, 643; 624 NW2d 746 (2000).

The trial court determined that the repeated attempts to question defendant without advising him of his rights and the lack of any rational explanation for the delay in arraignment

indicated that defendant was being held to extract a confession and that, combined with youth and lack of a prior criminal record, tipped the scale in favor of involuntariness. While reasonable minds might differ in the balancing of the relevant factors, the trial court's ruling was not so blatantly incorrect as to be clearly erroneous. *People v Cheatham*, 453 Mich 1, 30, n 23; 551 NW2d 355 (1996).

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette